

interested parties is considered, public comment is requested, and the National Park Service will consider all comments received and make appropriate amendments if public comments so warrant.

**DATES:** Comments must be received on or before September 6, 1995.

**ADDRESSES:** Comments should be directed to Robert K. Yearout, Chief, Concessions Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127.

**FOR FURTHER INFORMATION CONTACT:** Laurie Shaffer, Contract Analyst, Contract Branch, Concessions Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127. Copies of the proposed guidelines are available on request.

**Roger G. Kennedy,**  
*Director.*

[FR Doc. 95-19309 Filed 8-4-95; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32433]

### Chicago and North Western Transportation Company—Construction and Operation Exemption—City of Superior, Douglas County, WI

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10901 Chicago and North Western Railway Company's (CNW) construction and operation of a 2,900-foot line of railroad, subject to conditions to mitigate environmental effects. The proposed line, located in the City of Superior, Douglas County, WI, will connect CNW's Superior rail yard to a transloading coal dock owned by Midwest Energy Resources Company on Lake Superior. By decision served May 11, 1994 (published May 12, 1994, at 59 FR 24710), the Commission conditionally exempted only construction of the line, subject to completion of environmental review and a further decision. The environmental analysis is now completed.

**DATES:** This exemption is effective on August 7, 1995, subject to the condition that CNW comply with the environmental mitigation measures adopted in the decision regarding

construction and operation of the involved rail line. Petitions to reopen must be filed by August 28, 1995.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 32433 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioner's representative: Stuart F. Gassner, One North Western Center, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660. (TDD for the hearing impaired: (202) 927-5721.)

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue NW., Room 2229, Washington, DC 20423. Telephone: (202) 289-4537/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

Decided: July 24, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and Commissioners Simmons and McDonald.

**Vernon A. Williams,**  
*Secretary.*

[FR Doc. 95-19368 Filed 8-4-95; 8:45 am]

BILLING CODE 7035-01-P

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### United States v. Interstate Bakeries Corp. and Continental Baking Co.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a proposed Final Consent Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois, Eastern Division in a civil antitrust case, *United States v. Interstate Bakeries Corp. and Continental Baking Co.*, Civ. No. 95 C 4194.

On July 20, 1995, the United States filed a Complaint seeking to enjoin a transaction by which Interstate agreed to acquire Continental. Continental and Interstate are the country's first and third largest wholesale commercial bakers and producers of white pan bread ("plain old white bread"). The Complaint alleged that the proposed acquisition would substantially lessen

competition in the sale of white pan bread in five markets (Chicago, Milwaukee, central Illinois (Springfield, Peoria, Champaign/Urbana), San Diego, and Los Angeles) in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment requires defendants to divest such brand names and possibly other assets as are necessary to create a new competitor in the sale of white pan bread in each of the five markets. If the required divestitures are not accomplished within nine months, the Court will appoint a trustee to complete the sales. The Hold Separate Stipulation and Order is intended to facilitate the divestitures by requiring defendants to hold separate and maintain certain products and plans as economically viable assets pending possible divestiture. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

The public is invited to comment to the Justice Department and to the Court. Comments should be addressed to Anthony V. Nanni, Chief, Litigation I Section, U.S. Department of Justice, Antitrust Division, 1401 H Street NW., Room 4000, Washington, DC 20530 (telephone: (202) 307-0207). Comments must be received within sixty days.

Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 207 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514-2841), and at the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn, 20th Floor, Chicago, Illinois, 60604. Copies of these materials may be obtained upon request and payment of a copying fee.

**Constance K. Robinson,**

*Director of Operations.*

Civil Action No.: 95C 4194

Filed: 7/20/95

Judge Manning

#### Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

#### I. Definitions

As used in this Stipulation and Order:

A. "Associated Assets" means:

(1) All labels used on White Pan Bread in the Relevant Territories;

(2) All land, buildings, fixtures, machinery and equipment related to the plant;

(3) All trucks and other vehicles, depots or warehouses, and thrift stores utilized by defendants in the distribution of White Pan Bread in the Relevant Territories; and

(4) All route books, customer lists, and other records used in the defendants' day-to-distribution of White Pan Bread in the Relevant Territories.

B. "Label" means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress, the brand's trade secrets; the brand's production knowhow, including, but not limited to, recipes and formulas used to produce bread sold under the label; and packaging, marketing and distribution knowhow and documentation, such as customer lists and route maps, associated with the brand.

C. "Continental" means Continental Baking Company, each division or subsidiary thereof, and each officer, director, employee, attorney, agent, successor or assignee, or other person acting for or on behalf of any of them.

D. "Interstate" means Interstate Bakeries Corporation, each division or subsidiary thereof, and each officer, director, employee, attorney, agent, successor or assignee, or other person acting for or on behalf of any of them.

E. "Interstate's Chicago Plant" means the Interstate bread production facility located in Chicago, Illinois and its Associated Assets.

F. "Interstate's Southern California Plant" means the Interstate bread production facility located in Glendale, California and its Associated Assets.

G. "Interstate's Central Illinois Plants" means the Interstate bread production facility located in Decatur, Illinois and the Interstate bread production facility located in Peoria, Illinois and their Associated Assets.

H. "Continental's Chicago Plant" means the Continental bread production facility located in Hodgkins, Illinois and its Associated Assets.

I. "Continental's Southern California Plant" means the Continental bread production facility located in Pomona, California and its Associated Assets.

J. "Eastern Wisconsin Territory" means Adams, Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Forest, Florence, Green, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha,

Waupaca, Waushara, and Winnebago counties in the state of Wisconsin.

K. "Chicago Territory" means Boone, Cook, DeKalb, Du Page, Grundy, JoDaviess, Kane, Kankakee, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago counties in the state of Illinois, and Lake and Porter counties in the state of Indiana.

L. "Central Illinois Territory" means Adams, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Jasper, Jersey, Knox, La Salle, Lawrence, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McLean, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Richland, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Wabash, Warren, Wayne, Whiteside, and Woodford counties in the state of Illinois.

M. "Southern California Territory" means Imperial, Los Angeles, Orange, Riverside, San Bernadino, and San Diego counties in the state of California.

N. "Relevant Territories" means the Chicago, Eastern Wisconsin, Southern California, and Central Illinois Territories.

O. "White Pan Bread" means white bread baked in a pan but shall not include hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

## II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures for the purpose of establishing viable competitors in the sale of White Pan Bread to remedy the anticompetitive effects that the United States alleges would otherwise result from the acquisition of Continental by Interstate. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that certain Interstate and Continental labels, plants and marketing and sales operations that compete in the Relevant Territories are maintained as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestitures.

## III. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate Continental's Chicago and Southern

California Plants as independent competitors with management and operations held entirely separate, distinct and apart from those of Interstate. Defendants shall not coordinate the production, marketing or terms of sale of Continental's bread products with Interstate's bread products in the Relevant Territories. Within thirty (30) days of the entering of this Order, defendants shall inform plaintiff of steps taken to comply with this provision.

B. Defendants shall take all steps necessary to ensure that Interstate's Chicago, Southern California and Central Illinois Plants and Continental's Chicago and Southern California Plants will be maintained as economically viable, ongoing business concerns. Defendants shall use all reasonable efforts to maintain and increase the sales of Interstate's and Continental's White Pan Bread and other bread products in the Relevant Territories and otherwise maintain these businesses as active competitors in the Relevant Territories.

C. Defendants shall provide capital and provide and maintain sufficient working capital to maintain Interstate's Chicago, Southern California, and Central Illinois Plants and Continental's Chicago and Southern California Plants as economically viable, ongoing businesses, consistent with the requirements of Sections III(A) and (B).

D. Defendants shall not sell, lease, assign, transfer or otherwise dispose of, or pledge as collateral for loans, assets that may be required to be divested pursuant to the Final Judgment.

E. Defendants shall preserve the assets that may be required to be divested pursuant to the Final Judgment in a state of repair equal to their state of repair as of the date of this Hold Separate Stipulation and Order, ordinary wear and tear excepted.

F. Defendant shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as every four weeks or every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of Interstate's Chicago, Southern California and Central Illinois Plants and Continental's Chicago and Southern California Plants.

G. The production, pricing and promotional plans specific to Interstate's Chicago, Southern California, or Central Illinois Plants will not be transferred or otherwise made available to persons having direct sales or marketing responsibility for Continental's marketing and sales of

White Pan Bread in any Relevant Territory; and the production, pricing and promotional plans specific to Continental's Chicago or Southern California Plants, or to Continental's marketing and sales of White Pan Bread in any Relevant Territory, will not be transferred or otherwise made available to persons having direct sales or marketing responsibility for Interstate's marketing and sales of White Pan Bread in any Relevant Territory, unless needed to comply with other provisions of this Order.

H. Except in the ordinary course of business, or as is otherwise consistent with the requirements of Sections III(A) and (B), defendants shall not transfer or terminate, or alter any current employment or salary agreements for, any executive-level management, sales, marketing, or engineering personnel of Interstate's Chicago, Southern California, or Central Illinois Plants or Continental's Chicago or Southern California Plants.

I. Defendants shall not in anyway inhibit the ability of any licensee or purchaser under the Final Judgment from hiring any person currently an employee of defendants' at any plant that may be divested pursuant to the Final Judgment.

J. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser or purchasers.

K. This Hold Separate Stipulation and Order shall remain in effect as to each Relevant Territory pending consummation of the divestitures contemplated by the proposed Final Judgment as to that Relevant Territory, or until further Order of the Court.

Respectfully submitted,

Dated:

For Plaintiff United States of America:

Anne K. Bingaman,  
*Assistant Attorney General.*  
Arnold C. Celnicker  
Lawrence R. Fullerton  
Charles R. Schwidde  
Charles Biggio  
Anthony Harris  
*Illinois Bar #01133713*  
Constance K. Robinson  
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Anthony V. Nanni  
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Willie L. Hudgins  
*Attorneys, U.S. Department of Justice*  
*Antitrust Division.*  
James B. Burns,  
*U.S. Attorney, N.D. Illinois.*

For Defendant Interstate Bakeries Corporation  
Terry M. Grimm

For Defendant Continental Baking Company  
Jay W. Brown

It is so ordered this 20th day of July, 1995.  
Blanche M. Manning,  
*United States District Court Judge.*

#### Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Northern District of Illinois.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)-(h)), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendants and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

4. The parties shall abide by and comply with the provisions of the Hold Separate Stipulation and Order pending entry of the Hold Separate Stipulation and Order, and shall, from the date of the filing of this Stipulation, comply

with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

5. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

Respectfully submitted.

For Plaintiff United States of America

Anne K. Bingaman,  
*Assistant Attorney General.*  
Arnold C. Celnicker  
Lawrence R. Fullerton  
Charles R. Schwidde  
Charles Biggio  
Anthony Harris  
*Illinois Bar #01133713*  
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Evelina Almirantearena  
Anthony V. Nanni  
Maurice Stucke  
Willie L. Hudgins  
*Attorneys, U.S. Department of Justice,*  
*Antitrust Division.*  
James B. Burns,  
*U.S. Attorney, N.D. Illinois.*

For Defendant Interstate Bakeries Corporation

Terry M. Grimm

For Defendant Continental Baking Company  
Jay W. Brown

So Ordered.

United States District Judge

#### Final Judgment

WHEREAS, plaintiff, United States of America, having filed its Complaint herein on July 20, 1995, and plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

AND WHEREAS, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, prompt and certain divestiture of certain rights or assets and prompt implementation of the Hold Separate Stipulation And Order to assure that competition is not substantially lessened are the essence of this agreement;

AND WHEREAS, the parties intend to require defendants to make certain

divestitures for the purpose of establishing viable competitors in the sale of White Pan Bread;

AND WHEREAS, defendants have represented to plaintiff that the divestitures required below can and will be made and that defendants will later raise no claims of hardship or difficulty as ground for asking the Court to modify any of the divestiture provisions contained below;

NOW, THEREFORE, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

### **I. Jurisdiction**

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

### **II. Definitions**

As used in this Final Judgment:

A. "Interstate" means defendant Interstate Bakeries Corporation, a Delaware corporation with its headquarters in Kansas City, Missouri, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

B. "Continental" means defendant Continental Baking Company, a Delaware corporation with its headquarters in St. Louis, Missouri, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees.

C. "Bread Assets" means:

(1) Either the Mrs. Karl's Label or the Wonder Label for all bread products except White Pan Bread in the Eastern Wisconsin Territory;

(2) Either the Butternut Label or the Wonder Label for all bread products except White Pan Bread in the Chicago Territory;

(3) Either the Butternut Label or the Sunbeam Label or the Wonder Label for all bread products except White Pan Bread in the Central Illinois Territory;

(4) Either the Weber's Label or the Wonder Label for all bread products except White Pan Bread in the Southern California Territory;

(5) Either the Interstate plant located in Chicago, Illinois or the Continental plant located in Hodgkins, Illinois;

(6) Either the Interstate plant located in Glendale, California or the Continental plant located in Pomona, California;

(7) Either the Interstate plant located in Decatur, Illinois or the Interstate plant located in Peoria, Illinois;

(8) All land, buildings, fixtures, machinery and equipment related to the above plants;

(9) All trucks and other vehicles, depots or warehouses, and thrift stores utilized by defendants in the distribution of bread products under the Relevant Labels in the Relevant Territories; and

(10) All route books, customer lists, and other records used in the defendants' day-to-day distribution of bread products under the Relevant Labels in the Relevant Territories.

D. "Label" means all legal rights associated with a brand's trademarks, trade names, copyrights, designs, and trade dress; the brand's trade secrets; the brand's production knowhow, including, but not limited to, recipes and formulas used to produce bread sold under the brand; and packaging, marketing and distribution know how and documentation, such as customer lists and route maps, associated with the brand.

E. "Eastern Wisconsin Territory" means Adams, Brown, Calumet, Columbia, Dane, Dodge, Door, Fond du Lac, Forest, Florence, Green, Green Lake, Jefferson, Kenosha, Kewaunee, Langlade, Manitowoc, Marinette, Marquette, Menominee, Milwaukee, Oconto, Outagamie, Ozaukee, Portage, Racine, Rock, Shawano, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, and Winnebago counties in the state of Wisconsin.

F. "Chicago Territory" means Boone, Cook, DeKalb, Du Page, Grundy, JoDaviess, Kane, Kankakee, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago counties in the state of Illinois, and Lake and Porter counties in the state of Indiana.

G. "Central Illinois Territory" means Adams, Bond, Brown, Bureau, Calhoun, Carroll, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Fulton, Greene, Hancock, Henderson, Henry, Iroquois, Jasper, Jersey, Knox, La Salle, Lawrence, Livingston, Logan, Macon, Macoupin, Madison, Marion, Marshall, Mason, McDonough, McLean, Menard, Mercer, Montgomery, Morgan, Moultrie, Peoria, Piatt, Pike, Putnam, Richland, Rock Island, Sangamon, Schuyler, Scott, Shelby, Stark, Tazewell, Vermilion, Wabash, Warren, Wayne, Whiteside, and Woodford counties in the state of Illinois.

H. "Southern California Territory" means Imperial, Los Angeles, Orange, Riverside, San Bernadino, and San Diego counties in the state of California.

I. "Relevant Labels" means:

(1) Either the Mrs. Karl's Label or the Wonder Label for White Pan Bread in the Eastern Wisconsin Territory;

(2) Either the Butternut Label or the Wonder Label for White Pan Bread in the Chicago Territory;

(3) Either the Butternut Label or the Sunbeam Label or the Wonder Label for White Pan Bread in the Central Illinois Territory; and

(4) Either the Weber's Label or the Wonder Label for White Pan Bread in the Southern California Territory.

J. "Relevant Territories" means the Chicago Territory, the Eastern Wisconsin Territory, the Central Illinois Territory and the Southern California Territory.

K. "White Pan Bread" means white bread baked in a pan but shall not include hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

### **III. Applicability**

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Relevant Labels and the Bread Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

C. Nothing contained in this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

D. The provisions of Section IV through VIII of this Final Judgment shall not be effective until the consummation of the acquisition of Continental by Interstate.

### **IV. Divestiture**

A. Defendants are hereby ordered and directed, within nine (9) months of entry of this Final Judgment, to grant to one or more purchasers a perpetual, royalty-free, assignable, transferable, exclusive license to use the Relevant Labels to produce (or have produced for it) and sell White Pan Bread in the Relevant Territories, together with such Bread Assets as are reasonably necessary in order for the acquirer of each Relevant Label to sell White Pan Bread under each respective Relevant Label at a level substantially equivalent to the average level of White Pan Bread

sales of each respective Relevant Label in each Relevant Territory over the preceding year, and otherwise to remain a viable competitor in the White Pan Bread market in each Relevant Territory. Defendants shall cease using a Relevant Label within five (5) days of when a purchaser commences its use.

B. Defendants agree to take all reasonable steps to accomplish quickly said divestiture. Plaintiff may, in its sole discretion, extend the time period for divestiture for an additional period of time not to exceed two months.

C. In accomplishing the divestiture ordered by this Final Judgment, the defendants promptly shall make known, by usual and customary means, the availability of the Relevant Labels. The defendants shall provide any person making an inquiry regarding a possible purchase with a copy of the Final Judgment. The defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all reasonably necessary information regarding the Relevant Labels, except such information subject to attorney-client privilege or attorney work product privilege. Defendants shall provide such information to the plaintiff at the same time that such information is made available to any other person. Defendants shall permit prospective purchasers of the Relevant Labels to have access to personnel and to make such inspection of physical facilities and any and all financial, operational, or other documents and information as may be relevant to the divestiture required by this Final Judgment.

D. Unless the plaintiff otherwise consents, divestiture under Section IV(A), or by the trustee appointed pursuant to Section V, shall include such Bread Assets and be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that the Relevant Labels can and will be used by the purchaser or purchasers as part of viable, ongoing businesses engaged in the selling of White Pan Bread at wholesale to retail grocery stores and other customers. Divestiture shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase or purchases are for the purpose of competing effectively in the selling of White Pan Bread at wholesale to retail grocery stores and other customers; and (2) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the selling of White Pan Bread at wholesale to retail grocery stores and other customers; and (3) none of the terms of any agreements between the purchaser

or purchasers and defendants give defendants the ability artificially to raise the purchaser's or purchasers' costs, lower the purchaser's or purchasers' efficiency, or otherwise interfere in the ability of the purchaser or purchasers to compete effectively.

#### **V. Appointment of Trustee**

A. If defendants have not accomplished the divestiture required by Section IV within the time specified therein, defendants shall notify plaintiff of that fact in writing. Within ten (10) calendar days of that date, plaintiff shall provide defendants with written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. Defendants shall notify plaintiff within five (5) calendar days thereafter whether either or both of such nominees are acceptable. If either or both of such nominees are acceptable to defendants, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to defendants, they shall furnish to plaintiff, within ten (10) calendar days after plaintiff provides the names of its nominees, written notice of the names and qualifications of not more than two (2) nominees for the position of trustee for the required divestiture. If either or both of such nominees are acceptable to plaintiff, plaintiff shall notify the Court of the person upon whom the parties have agreed and the Court shall appoint that person as the trustee. If neither nominee is acceptable to plaintiff, plaintiff shall furnish the Court the names and qualifications of its and defendants' proposed nominees. The Court may hear the parties as to the nominees' qualifications and shall appoint one of the nominees as the trustee.

B. If defendants have not accomplished the divestiture required by Section IV of this Final Judgment at the expiration of the time period specified therein, subject to the selection process described in Section V(A), the appointment by the Court of the trustee shall become effective. The trustee shall then take steps to effect divestiture as specified in Section IV(A). The trustee shall have the right, in its sole discretion, to include in the package of assets to be divested any or all of the Bread Assets in addition to the Relevant Labels.

C. After the trustee's appointment has become effective, only the trustee shall have the right to license the Relevant Labels and to sell the Bread Assets. The trustee shall have the power and

authority to accomplish the divestiture to a purchaser acceptable to plaintiff at such price and on such terms as are then obtainable upon the best reasonable effort by the trustee, subject to the provisions of Section IV of this Final Judgment, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to the licensing of the Relevant Labels or the sale of the Bread Assets by the trustee on any ground other than the trustee's malfeasance. Any such objection by defendants must be conveyed in writing to plaintiff and the trustee within fifteen (15) calendar days after the trustee has notified defendants of the proposed licensing and sale in accordance with Section VI of this Final Judgment.

D. The trustee shall serve at the cost and expense of defendants, shall receive compensation based on a fee arrangement providing an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, and shall serve on such other terms and conditions as the Court may prescribe; provided however, that the trustee shall receive no compensation, nor incur any costs or expenses, prior to the effective date of his or her appointment. The trustee shall account for all monies derived. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to defendants and the trust shall then be terminated.

E. Defendants shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Labels or the Bread Assets and shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee shall have full and complete access to the personnel, books, records, and facilities of defendants' overall businesses, and defendants shall develop such financial or other information necessary to the divestiture of the Relevant Labels and the Bread Assets.

F. After its appointment becomes effective, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish divestiture of the Relevant Labels and the Bread Assets as contemplated under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in

acquiring, entered into negotiations to acquire, or was contracted or made an inquiry about acquiring, any interest in the Relevant Labels or the Bread Assets, and shall describe in details each contact with any such person during that period. The trustee shall maintain full records of all efforts made to divest these operations.

G. Within six (6) months after its appointment has become effective, if the trustee has not accomplished the divestiture required by Section IV of this Final Judgment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include augmenting the assets to be divested, and extending the trust and the terms of the trustee's appointment.

#### VI. Notification

Within two (2) calendar days following execution of a contract, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiff of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or desire to, acquire any ownership interest in the business that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiff may request additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested within twenty (20) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within

thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiff has been provided the additional information requested (including any additional information requested of persons other than defendants or the trustee), whichever is later, plaintiff shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiff provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under the provisions in Section V(C). Absent written notice that the plaintiff does not object to the proposed purchaser, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiff, or by defendants under the proviso in Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

#### VII. Affidavits

Within ten (10) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed or authority to effect divestiture passes to the trustee pursuant to Section V of this Final Judgment, defendants shall deliver to plaintiff an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Labels or in the Bread Assets, and shall describe in detail each contact with any such person during that period. Defendants shall maintain full records of all efforts made to divest these operations.

#### VIII. Financing

With prior written consent of the plaintiff, defendants may finance all or any part of any purchase made pursuant to Sections IV or V of this Final Judgment.

#### IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation And Order entered

by this Court. Defendants shall take no action that would jeopardize the licensing of the Relevant Labels or the sale of the Bread Assets.

#### X. Compliance Inspection

Only for the purpose of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants made to its principal office, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview officers, employees, and agents of defendants, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to defendants' principal office, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in this Section X shall be divulged by a representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of security compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal

proceeding (other than a grand jury proceeding).

### **XI. Retention of Jurisdiction**

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

### **XII. Termination**

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date its entry.

### **XIII. Public Interest**

Entry of this Final Judgment is in the public Interest.

Dated: \_\_\_\_\_

United States District Judge

### **Competitive Impact Statement**

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

### **I. Nature and Purpose of the Proceeding**

The United States filed a civil antitrust Complaint on July 20, 1995, alleging that the proposed acquisition of Continental Baking Company ("Continental") by Interstate Bakeries Corporation ("Interstate") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. Continental and Interstate are the nation's first and third largest producers of white pan bread.

The Complaint alleges that the combination of these major competitors would substantially lessen competition in the production and sale of white pan bread in five geographic markets: the Chicago area; the Milwaukee area; central Illinois (i.e., Peoria, Springfield, Champaign/Urbana); the Los Angeles area and the San Diego area. The prayer for relief seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing Interstate from acquiring control of Continental's assets or otherwise combining them with its own business in these five geographic markets.

At the same time that the suit was filed, a proposed settlement was filed that would permit Interstate to complete

its acquisition of Continental's assets in other parts of the country, yet preserve competition in the markets in which the transaction would raise significant competitive concerns. Also filed were a Hold Separate Stipulation and Order, a Stipulation, and a proposed Final Judgment.

The Hold Separate Stipulation and Order would, in essence, require Interstate to ensure that, until the divestitures mandated by the Final Judgment have been accomplished, Continental's bread production and distribution facilities and ancillary assets located in the affected markets will be held separate and apart from, and operated independently of, other Interstate assets and businesses. Moreover, because the Final Judgment may require Interstate to divest either its or Continental's plants and ancillary assets in these geographic markets, until the divestitures are accomplished, Interstate must preserve and maintain both sets of assets as saleable and economically viable, ongoing concerns.

The proposed Final Judgment orders defendants to divest to one or more purchasers certain white pan bread labels in each market. Additional assets to be divested may include bread production and distribution facilities and ancillary assets currently used by Interstate or Continental in each market, as may be required by the purchaser to be able to sell branded white pan bread at levels substantially equivalent to the levels existing before the acquisition. Defendants must complete these divestitures within nine months after entry of the Final Judgment. If they do not, the Court may appoint a trustee to sell the assets.

The United States, Interstate, and Continental have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

### **II. Description of the Events Giving Rise to the Alleged Violation**

#### **A. The Defendants and the Proposed Transaction**

Interstate, based in Kansas City, Missouri, is the third largest wholesale baker in the United States. In 1994, it reported total sales of \$1.1 billion. Interstate has 14,000 employees, operates 31 commercial bakeries, and transacts business in 39 states.

Continental, a subsidiary of St. Louis-based Ralston Purina Company, is the nation's largest wholesale baker. In 1994, Continental reported total sales of \$1.95 billion. It employs 22,000 and operates 35 commercial bakeries that service 80% of the nation's population.

On January 8, 1995, Interstate and Continental announced an agreement by which Interstate would acquire Continental from its parent, Ralston Purina Corporation, for cash and stock. This \$450 million transaction, which would combine Interstate and Continental, precipitated the government's suit.

#### **B. The White Pan Bread Industry**

White pan bread describes the ubiquitous, white, sliced, soft loaf known to most consumers as "plain old white bread." An American household staple, white pan bread is sold in the commercial bread aisle of every grocery store, convenience store, and mass merchandiser. White pan bread differs significantly in product attributes from other types of bread, such as variety bread (e.g., wheat, rye or French) and freshly baked in-store breads, in taste, texture, uses, perceived nutritional value, keeping qualities, and appeal to various groups of consumers. These differing attributes give rise to distinct consumer preferences for each type of bread. Many children, for instance, strongly prefer to eat white pan bread, and hence, a primary use of this bread is for sandwiches in school lunches.

Because of its unique appeal and its distinguishing attributes, a small but significant increase in the price of white pan bread by all producers would not be rendered unprofitable by consumers substituting other breads. White pan bread is, therefore, an appropriate product market in which to assess the competitive effects of the acquisition.

White pan bread is mass produced on high speed production lines by wholesale commercial bakers,<sup>1</sup> who package and sell it to retailers under either their own brand or a private label (i.e., a brand controlled by a grocery chain or buying cooperative). Though physically similar to private label, branded white pan bread is perceived by consumers as fresher, better tasting, and higher quality bread; consequently, consumers often pay a premium of twice as much or more for branded white pan bread. Competition in the white pan bread market takes place on two levels, between different brands of

<sup>1</sup> The bread is also made by so-called "captive" bakers, i.e., wholesale commercial bakers which are owned by, and bake bread exclusively for, a grocery chain or wholesale grocery buying cooperative.



white breads and between branded and private label white bread.

### *C. Competition Between Interstate and Continental*

Interstate and Continental compete directly in producing, promoting, and selling both private label and branded white pan bread to grocery retailers, who in turn sell it to consumers. Interstate's popular Butternut, Sunbeam, Mrs. Karl's and Weber's regional brands and Continental's powerhouse national Wonder brand are regarded by consumers as particularly close substitutes, for they are very comparable in appearance, price, taste, perceived quality and freshness.

Interstate and Continental recognize the rivalry between their products in the relevant geographic markets. To avoid losing sales to the other, each has engaged in extensive promotional, couponing, and advertising campaigns that reduce the prices charged for their branded white pan breads to the benefit of consumers. Through these activities, Interstate and Continental have each operated as a significant competitive constraint on the other's prices for white pan bread.

### *D. Anticompetitive Consequences of the Acquisition*

The Complaint alleges that Interstate's acquisition of Continental would remove the competitive constraint and create (or facilitate Interstate's exercise of) market power (i.e., the ability to increase prices to consumers) in five relevant geographic markets: the Chicago area; the Milwaukee area; central Illinois (i.e., Peoria, Springfield, Champaign/Urbana); the Los Angeles area and the San Diego area.

Specifically, the Complaint alleges that the acquisition would increase concentration significantly in these already highly concentrated, difficult-to-enter markets.<sup>2</sup> Post-acquisition, Interstate would dominate each market. It would control 41% of all sales of white pan bread in the Chicago market; 33% in the Milwaukee market; 62% in the central Illinois market; 64% in the

Los Angeles market; and 50% in the San Diego market.

The Complaint alleges that Interstate's acquisition of Continental would likely lead to an increase in prices charged to consumers for white pan bread. Following the acquisition, Interstate likely would unilaterally raise the price of its own brands, Continental's Wonder, or both. Because Interstate and Continental's brands are perceived by consumers as close substitutes, Interstate could pursue such a pricing strategy without losing so much in sales to competing white pan bread brands or to private labels that the price increase would be unprofitable. Interstate could, for instance, profitably impose a significant increase in the price of the Wonder white pan bread, since a substantial portion of any sales lost for that product would be recaptured by increased sales of Interstate's other brands. Similarly, Interstate could increase the prices of any one of its other popular brands of white pan bread, such as Butternut, and much of the sales lost by that brand would be picked up by Interstate's Wonder white bread brand.

Since many consumers consider Interstate and Continental brands to be closer substitutes than most other branded or private label white breads, the competitive discipline provided by rivals after the acquisition would be insufficient to prevent Interstate from significantly increasing the prices now being charged for Interstate and Continental branded white pan bread. Moreover, in response to Interstate's price increases, competing bakers would likely increase their prices of white pan bread.

The Complaint alleges that new entry by other wholesale commercial bakers, or brand repositioning by existing competitors, in any of the five adversely affected geographic markets is unlikely to counteract these anticompetitive effects.

### **III. Explanation of the Proposed Final Judgment**

The proposed Final Judgment would preserve competition in the sale of white pan bread in each of the five relevant geographic markets. Within nine months after entry of the Final Judgment, defendants will divest certain white pan bread labels, and other assets if necessary, to make an economically viable competitor in the sale of white pan bread in each geographic market. It may well be that all that is required to accomplish this goal is the sale to an existing wholesale baker of the exclusive rights to make and sell white pan bread under either Continental or

Interstate's most popular brand. Depending on the purchasers' requirements, however, effective divestiture could also require a sale of Interstate or Continental's production and distribution facilities. Defendants must take all reasonable steps necessary to accomplish the divestitures, and shall cooperate with the prospective purchaser or with the trustee. If defendants do not accomplish the ordered divestitures within that nine-month time period, the Final Judgment provides that the Court will appoint a trustee to complete the divestitures.

If a trustee is appointed, the proposed Final Judgment provides that Interstate will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate.

The relief sought in the various markets alleged in the Complaint has been tailored to ensure that consumers of white pan bread will not experience unreasonably high prices as a consequence of the acquisition.

### **IV. Remedies Available to Potential Private Litigants**

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

### **V. Procedures Available for Modification of the Proposed Final Judgment**

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent.

<sup>2</sup> The Hirschman-Hirfindahl Index ("HHI") is a widely-used measure of market concentration. Following the acquisition, the approximate post-merger HHIs, calculated from 1994 dollar sales, would be over: 2250 with a change of 766 for Chicago; 1800 with a change of 548 for Milwaukee; 4000 with a change of 974 for central Illinois; 4200 with a change of 2035 for Los Angeles; and 2900 with a change of 1265 for San Diego. Under the *Merger Guidelines*, the Antitrust Division is likely to challenge any acquisition that increases the HHI by 50 points or more in a market in which the post-merger HHI will exceed 1800 points.



The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530. The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

#### VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against defendants Interstate and Continental. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the Final Judgment will establish viable white pan bread competitors in the geographic markets that would otherwise be adversely affected by the acquisition. Thus, the Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

#### VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment, "is in the public interest." In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 1995-1 Trade Cas. (CCH) p 71,027, at \_\_\_\_ (Slip op. 26) (D.C. Cir. June 16, 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."<sup>3</sup> Rather,

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should \* \* \* carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States v. Mid-America Dairymen, Inc.*, 1977-1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 1995-1 Trade Cas. at

<sup>3</sup> 119 Cong. Rec. 24598 (1973). See *United States v. Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93-1463, 93rd Cong. 2d Sess. 8-9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

\_\_\_\_ (Slip. op. 22). Precedent requires that

The balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.<sup>4</sup>

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" (citations omitted).<sup>5</sup>

#### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: July 21, 1995.

Respectfully submitted,

Arnold C. Celnicker,  
Attorney, Antitrust Division, U.S. Department of Justice.

#### Certificate of Service

I hereby certify that on July 21, 1995, I caused a copy of the Competitive Impact Statement filed in *U.S. v. Interstate Bakeries Corporation and Continental Baking Company*, Civil No. 95 C 4194, to be served, by first class

<sup>4</sup> *United States v. Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States v. BNS, Inc.*, 858 F.2d at 463; *United States v. National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States v. Gillette Co.*, 406 F. Supp. at 716. See also *Microsoft*, 1995-1 Trade Cas. at \_\_\_\_ (Slip op. 23) (whether "the remedies (obtained in the decree are) so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.'" (citations omitted).

<sup>5</sup> *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) quoting *United States v. Gillette Co.*, *supra*, 406 F. Supp. at 716; *United States v. Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky 1985).

mail, postage prepaid on counsel for defendants Interstate Bakeries Corporation and Continental Baking Company, respectively: Terry Grimm, Winston & Strawn, 35 West Wacker Drive, Chicago, IL 60604; and Donald Hibner, Sheppard, Mullin, Richter & Hampton, 48th Floor, 333 South Hope Street, Los Angeles, CA 90071-1448.

Dated: July 21, 1995.

Arnold C. Celnicker,  
Attorney, U.S. Department of Justice,  
Antitrust Division.

[FR Doc. 95-19308 Filed 8-4-95; 8:45 am]

BILLING CODE 4410-01-M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB, and solicitation of public comment.

**SUMMARY:** NRC is preparing a submittal to OMB for review and continued approval of information collection requirements currently approved by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Title of the information collection:* 10 CFR 35.32 and 35.33, "Quality Management Program and Misadministrations".

2. *Current OMB approval number:* 3150-0171.

3. *How often the collection is required:* One time submittal of a quality management program (QMP) for each existing and new licensee, when the QMP is modified, or when new modalities (uses) are added to an existing license. Misadministrations are reported as they occur. Records of written directives, administered dose or dosage, an annual review of the QMP, and recordable events must be maintained in auditable form for 3 years and misadministrations for 5 years.

4. *Who will be required to report:* 10 CFR Part 35 licensees and equivalent Agreement State licensees who use byproduct material in limited diagnostic and therapeutic ranges.

5. *An estimate of the annual number of respondents:* 10 CFR 35.32: 6300 licensees, 10 CFR 35.33: 75 licensees.

6. *An estimate of the total number of hours needed to complete the*

*requirements or request:* Approximately 41,821 hours (Reporting: 35,035 hrs/yr, and Recordkeeping: 6,786 hrs/yr). The Commission is currently reviewing the compatibility requirements for the Agreement States. Relief from certain of these requirements would significantly reduce the burden associated with 10 CFR 35.32. If relief is granted to the Agreement States, the staff will submit a modification of the burden estimate that reflects the changes.

7. *Abstract:* In the medical use of byproduct material, there have been instances where byproduct material was not administered as intended or administered to a wrong individual which resulted in unnecessary exposures or inadequate or incorrect diagnostic or therapeutic procedures. The most frequent causes of these incidents were: insufficient supervision, deficient procedures, failure to follow procedures, and inattention to detail. To reduce the frequency of such events, the NRC requires licensees to implement a quality management program (10 CFR 35.32) to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by an authorized user physician.

Records and reports to NRC are required for certain errors in the administration of limited diagnostic and therapeutic quantities of byproduct material by medical use licensees. Section 35.33 clarifies these requirements to avoid confusion over whether certain events should be reported to NRC and to help ensure that the licensee is in compliance with the requirements. NRC has a responsibility to inform the medical community of generic issues identified in the NRC review of misadministrations.

NRC has revised the definition for "misadministration" in 10 CFR 35.2, "Definitions." The revision considerably reduces the number of "errors" that must be reported to the NRC or an Agreement State.

Collection of this information will enable the NRC to ascertain whether misadministrations are investigated by the licensee and that corrective action is taken.

Specific comments requested within 60 days:

1. Is the proposed renewal of the collection of information necessary for NRC to properly perform its functions, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the collection of information be minimized, including the use of automated collection techniques?

Members of the public may obtain, free of charge, a copy of the DRAFT OMB clearance submittal. This information can be obtained by Internet: SLM2@nrc.gov or by calling Sally L. Merchant at (301) 415-7874. The NRC anticipates that the OMB clearance submittal will be available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC, on August 18, 1995.

Comments and questions should be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T-6 F 33, Washington, D.C., 20555-0001, (301) 415-7233.

Dated at Rockville, Maryland, this 2nd day of August 1995.

For the U.S. Nuclear Regulatory Commission.

**Gerald F. Cranford,**

*Designated Senior Official for Information Resources Management.*

[FR Doc. 95-19500 Filed 8-4-95; 8:45 am]

BILLING CODE 7590-01-P

## Joint Nuclear Regulatory Commission/Environmental Protection Agency Guidance on the Storage of Mixed Radioactive and Hazardous Waste

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Publication of joint guidance and request for public comment.

**SUMMARY:** The Nuclear Regulatory Commission and Environmental Protection Agency (EPA) are jointly publishing herein a draft guidance document on the storage of mixed radioactive and hazardous waste (mixed waste). The Agencies are developing this guidance to assist mixed waste generators forced to store their mixed waste, pending the development of adequate treatment and disposal capacity for commercially generated mixed waste. The guidance points out areas of flexibility within NRC and EPA regulations that relate to the storage of mixed waste. Further, the guidance is consistent with the general approach EPA is undertaking as it reviews its current regulatory program. The Agencies are soliciting comments from members of the regulated community, the States, and the public. Interested individuals may provide the Agencies with their comments on the proposed guidance by forwarding their written comments to NRC at the address listed in the ADDRESSES section.